REDACTED VERSION

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-611

October 22, 2002

BANGOR GAS COMPANY, LLC
Request for Approval of Affiliated Interest Transaction with Sempra Energy Trading Company (§707)

EXAMINER'S REPORT

NOTE: This report is written in the form of an Order; however, it is the Staff's recommendation only and does not constitute formal Commission action. Parties may file exceptions to this Report by noon on October 28, 2002. We anticipate that the Commission will consider this case at its deliberative session on Tuesday, October 29, 2002.

I. SUMMARY

We find Bangor Gas Company, LLC's (Bangor Gas or BGC) proposed extension to its gas supply contract with its affiliate, Sempra Energy Trading Company (Sempra or SET), not adverse to the public interest and approve it.

II. PROCEDURAL HISTORY

On October 9, 2002, Bangor Gas filed, pursuant to 35-A M.R.S.A. §707, a request for approval of an affiliated transaction with SET and a request for protective order. Bangor Gas proposed to amend its gas supply agreement with SET, so that SET could provide Bangor Gas with needed gas supplies through the winter 2002-2003 season, November 1, 2002 through April 30, 2003.[1] Bangor Gas's application states

[1] The Commission approved the original gas supply contract between SET and BGC for the winter 2000-2001 in Docket No. 2000-938, as well as a first amendment to that contract to extend it through the summer 2001 period. The Commission approved additional extensions in Docket No. 2001-707.

that the contract extension resulted from a competitive bidding process, which it asserts was fair and reasonable.

Prior to filing the proposed amended agreement with SET, on August 15, 2002, Bangor Gas filed its proposed cost of gas adjustment (CGA) rate change for the winter 2002-2003 period. *Bangor Gas Company, LLC, Proposed Cost of Gas Adjustment, Docket No. 2002-481*. In its filing in that case, the Company provided information under protective order and testified in confidential session about its gas supply bidding and selection process.

This information included a copy of Bangor Gas's request for proposals (RFP) and its schedule for obtaining bids and selecting its gas provider for the winter period. At the September 25, 2002 technical conference in Docket No. 2002-481, Bangor Gas witness, Heidi J. Harnish, testified that the Company received several responses to its recent RFP for gas supply contracts that it had sent to numerous gas suppliers. One of those proposals was from its affiliate, SET, its current gas supplier.

On October 15, 2002, the Hearing Examiner issued a Notice of Proceeding setting an intervention date of October 18, 2002, and stating that any technical conferences or hearings would be scheduled after that date as warranted. On October 18, 2002, the Office of Public Advocate filed a Petition to Intervene. The Commission did not receive any other petitions to intervene in this case and the Advisory Staff determined that no technical conferences or hearings were warranted in this case, as all parties to this case were in attendance at the September 25, 2002 hearing in Bangor Gas's CGA filing.

On October 18, 2002, the Hearing Examiner issued an Order and Temporary Protective Order No. 1 in this docket to establish confidential treatment for gas supply bid information, as well as information regarding BGC's customers, existing or projected load, and the proposed gas supply contract with SET. An Examiner's Report was issued on October 22, 2002, and it was scheduled for deliberation on October 29, 2002.

III. RECORD

The record in this case will include all filings, transcripts, data responses, and other documents filed in this docket or in *Bangor Gas Company, LLC, Proposed Cost of Gas Adjustment (§4703), Docket No. 2002-481*. The record in Docket No. 2002-481 is incorporated into this case because it contains information relating to BGC's bid process, analysis and selection.

IV. ANALYSIS: BANGOR GAS RFP PROCESS, BID ANALYSIS, AND SUPPLIER SELECTION

On August 15, 2002, BGC issued an RFP for Winter 2002-2003 gas supply to approximately 25 potential bidders, including its affiliate and current supplier Sempra Energy Trading Company. BGC developed its list of potential bidders by drawing upon a number of sources including the Commission's registered supplier list, suggestions given to it by others in the industry, and entities holding firm capacity on the Maritimes and Northeast Pipeline, through which Bangor Gas receives its supply.[2] Bangor Gas indicated that it received several responses to its solicitation for gas supply contract proposals.

[2] The list included Sprague Energy, a regional supplier who contested its omission from Bangor Gas's solicitation list for the winter 2000-2001 period.

At the technical conference in Docket No. 2002-481 (BGC's Cost of Gas Adjustment) on September 25, 2002, BGC presented confidential testimony on its RFP process and indicated its tentative conclusion that SET was the lowest cost supplier. By a filing dated October 9, 2002, BGC indicated that, as a result of its RFP process, it believed that extending the SET contract for service through April 30, 2003, was its best option.

Under the RFP, BGC sought the option of splitting its load among any of three separately priced products: 1) Annual Base Load, which would be at a fixed price; 2) Gas Indexed Swing Load expressed as a differential above or below a published New England index price; and 3) First-of-the-Month Gas Indexed Load stated as a differential from a first-of-the-month published index price. BGC's nominated volume under these various options would be specified once at the beginning of the winter period, daily, or before the beginning of each month, respectively. At the Technical Conference, BGC stated that **[Begin Confidential]**

[End Confidential] Tr. A-36 (Confidential).

BGC received viable bids from highly qualified suppliers. **[Begin Confidential]**

[End Confidential]

All of these calculations reflect last year's market; however, the critical question is what the differential will be next year. We note that there were larger differentials between Dracut and Zone 6 during the winter 2000 to 2001 during periods of very high and volatile prices in the gas market. Last winter under other market conditions, the differential range was much smaller. In fact, it is very difficult to determine with any confidence which of the two bids will turn out to be lower. However, Ms. Harnish testified that last year's contract extension resulted in cost savings to Bangor Gas's customers.

There are other considerations that should be factored into the decision. **[Begin Confidential]**

[End Confidential] On the other hand, many businesses prefer to have established relationships with more than one supplier. The availability of options gives vitality to a competitive market and can produce benefits to the purchaser.

Which proposal would be more beneficial to Bangor Gas's ratepayers in this case is a difficult question. The determination cannot be made with certainty on price or other contract terms. Moreover, the situation raises the public interest question of whether the competitive market benefit of having a different, non-affiliated supplier selected to provide service to Bangor Gas outweighs the Company management's selection of an affiliate supplier with whom it has exclusively contracted for gas supply to date.

The statute requires that we make a finding that the affiliate arrangement is not adverse to the public interest. 35-A M.R.S.A. §707(3). The statute does not require that we make a finding that the affiliate arrangement is clearly better than any other alternative. Because the benefits of requiring Bangor Gas to change to a non-affiliated supplier at this point in time are unclear, and because Bangor Gas's analysis shows that the SET contract produces lower gas costs, we are willing to defer to BGC's judgment in this case with the comment that, as time goes on, the argument in favor of selecting a non-affiliated supplier, all other things being equal, will only become stronger.

To increase supplier interest in Bangor Gas's supply needs, the Company may want to consider changing its RFP in some way. One possible suggestion would be to propose a term of greater than six months to provide incentive for possible lower prices and less administrative burden in maintaining its future supply contracts, particularly given the tendency for lower gas sales during the summer months.

V. CONCLUSION

We find that Bangor Gas's proposed gas supply contract with SET to provide gas supply for the winter 2002-2003 period is not adverse to the interests of ratepayers and approve it.

Respectfully submitted,

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Carol A. MacLennan
Hearing Examiner

And

Lucretia Smith
Finance, Utility Analyst